

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

JUSTIN SIMO,

Complainant,

vs.

CITY OF HENDERSON and HENDERSON
POLICE OFFICERS ASSOCIATION,

Respondent.

ITEM NO. 796

CASE NO. A1-046111

ORDER

For Complainant: Justin Simo and his attorney Anthony P. Sgro, Esq.

For Respondent: City of Henderson and their attorney Josh M. Reid, Esq.

For Respondent: Henderson Police Officers Association and their attorney Nicholas M. Wiczorek, Esq.

On the 10th day of June, 2014, this matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board"), for consideration and decision pursuant to the provisions of the Local Government Employee-Management Relations Act ("the Act") and NAC chapter 288.

Both Respondents the City of Henderson and the Henderson Police Officers Association have separately asked this Board to dismiss the complaint against it. The two motions each make similar arguments alleging in substance that the complaint is barred by the six-month statute of limitations of NRS 288.110(4), that the complaint was not timely served and that the complaint suffers from technical deficiencies. The City's motion also argues that the complaint does not assert a violation of the Act that is within this Board's authority. After our initial review of these motions, we requested that the parties supply additional evidence to the Board. The parties have done so, and we look to the merits of the motions.

1 Statute of Limitations

2 NRS 288.110(4) provides that this Board may not hear a complaint filed more than six
3 months after the occurrence that gives rise to the complaint. This subsection operates as a statute
4 of limitations commencing upon unequivocal notice of a final adverse action and subject to
5 tolling as appropriate. City of N. Las Vegas v. State Local Gov't Employee-Mgmt. Relations Bd.,
6 127 Nev. Adv. Op. 57, 261 P.3d 1071 (2011). A respondent bears the burden to show that a
7 complaint is untimely. A&L Underground and Plumbers Local # 8, 302 N.L.R.B. 467, 469
8 (1991). The complaint was filed with this Board on January 24, 2014.
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10 The City points to Complainant Justin Simo's termination on April 29, 2013 as the
11 operative event that commenced the statute of limitations as to the allegations against it. The
12 Association points to May 22, 2013 as the date on which Simo had notice that the Association
13 would not pursue his grievance related to the February 27, 2013 motor vehicle accident. The
14 Association also points to additional notice that it would not pursue this grievance on June 4,
15 2013.
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18 In opposition to the motions, Simo asserts that his complaint was timely as he did not
19 actually receive notice until July 24, 2013 when the City informed Simo that it would not
20 consider his own grievance for the February 27, 2013 accident. Simo also asserts that the statute
21 of limitations is subject to tolling, waiver and estoppel.
22

23 There is another dimension to the timeliness issue as well due to Simo's filing a civil
24 complaint with the district court. When we asked for additional evidence, we requested the
25 parties to include copies of pleadings filed in that case. That evidence shows that the civil
26 complaint was filed on October 8, 2013, which is within the six-month limitations period under
27 each of Respondents' calculations. That evidence further shows that the complaint was dismissed
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1 by court order on March 6, 2014 following a motion to dismiss filed by the Association. The
2 hearing date was February 27, 2014. By that time Simo had already filed his complaint with this
3 Board. The basis for that dismissal before the district court was the failure to exhaust
4 administrative remedies.

5
6 This Board has previously tolled the statute of limitations in similar circumstances
7 consistent with the requirement of NRS 11.500 which offers limited forgiveness to a party that
8 brings a timely complaint, but does so before a court that lacks the jurisdiction. Bybee v. White
9 Pine County School Dist., Item No. 724C, EMRB Case No. A1-045972 (March 21, 2011). In this
10 case, it had not been determined by the district court that Simo's complaint asserted matters that
11 required administrative exhaustion until March 6, 2014. Perhaps hedging his bets, Simo filed his
12 complaint with this Board before the dismissal of his civil complaint had even occurred.
13 Consistent with NRS 11.500 he is permitted to recommence his complaint with this Board. As
14 Simo did not delay in doing so, and as his complaint was filed with the district court within the
15 six-month limitations period, we find his complaint to be timely.

16 Timeliness of Service

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18 NAC 288.080 specifies that a complaint must be served within five days after it has been
19 filed. In this case the complaint was filed on January 24, 2014 but was not served on the City
20 until February 28, 2014. The complaint was not served on the Association until February 21,
21 2014.

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23 NAC 288.235(2) allows this Board to overlook any defects in the pleadings that do not
24 affect the substantial rights of the parties. There is no indication of any prejudice to either of the
25 Respondents in this case, especially in light of the district court complaint. Therefore we
26 overlook this defect with the complaint and will not dismiss the complaint on this basis.
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1 Technical Requirements

2 Respondents also assert that the complaint omitted Simo's full name and address as well
3 as the full name and address of the Respondents, and that the complaint was not verified. NAC
4 288.200. Similarly, we find no prejudice to either Respondent and elect to overlook these
5 extremely minor defects pursuant to NAC 288.235(2).
6

7 Allegations Within the Authority of the Board

8 The City's motion argues that the complaint does not raise a dispute within this Board's
9 authority. We find this argument to be well-taken as this Board is limited to hearing complaints
10 arising out of NRS Chapter 288's performance or interpretation. UMC Physicians Bargaining
11 Unit v. Nevada Service Employees Union/ SEIU, Local 1107, 124 Nev. 84, 178 P.3d 709 (2008).
12 The complaint against the City raises no such allegation arising out of the Act's performance or
13 interpretation. Simo's opposition to the motion acknowledges that the allegations against the
14 City are for a breach of the collective bargaining agreement. As the City's reply in support of the
15 motion correctly points out, this Board has consistently recognized a lack of authority over
16 purely contractual disputes. Simo's reliance on Rosequist v. Int'l Assoc. of Firefighters, Local
17 1908, 118 Nev. 444, 49 P.3d 651 (2002) is not persuasive as to the City. In Rosequist the
18 Supreme Court recognized that the duty of fair representation arises out of a union's performance
19 under the Act and is therefore within the exclusive jurisdiction of this Board. It does not expand
20 our authority over purely contractual matters as is alleged against the City. We conclude
21 therefore that there is no probable cause for the complaint within our authority and thus dismissal
22 is warranted pursuant to NAC 288.375(1).
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26 Having considered the foregoing, the Board unanimously makes the following findings of
27 fact and conclusions of law:
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1. Pursuant to NRS 288.110(2) and NRS 288.280, the Board has jurisdiction over violations of NRS Chapter 288.
2. Simo's Complaint does not assert a violation of NRS Chapter 288 against the City of Henderson
3. Simo has not alleged any conduct by the City that falls within the statutory authority of the Board under NRS Chapter 288.

Based upon the foregoing, and as stated above, and good cause appearing therefore:

IT IS HEREBY ORDERED that Respondent City of Henderson's motion to dismiss is Granted.

IT IS FURTHER ORDERED that Respondent Henderson Police Officers Association's motion to dismiss is Denied.

DATED this 17th day of June, 2014

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY:



PHILIP E. LARSON., Chairman

BY:



SANDRA MASTERS, Vice-Chairman

BY:



BRENT ECKERSLEY, ESQ., Board Member

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CASE NO. A1-046111

NOTICE OF ENTRY OF ORDER

To: Justin Simo and his attorney Anthony P. Sgro, Esq.

To: City of Henderson and their attorney Josh M. Reid, Esq.

To: Henderson Police Officers Association and their attorney Nicholas M. Wieczorek, Esq.

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
June 17, 2014.

A copy of said order is attached hereto.

DATED this 17th day of June, 2014.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


YVONNE MARTINEZ, Executive Assistant

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